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SUMMARY RECORD OF THE 77th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 April 1991, at 10 a.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Additional report of Chile (CAT/C/7/Add.9)

1. At the invitation of the Chairman, Mr. Garretón, Mr. Cruz and Mr. Oyarce (Chile) took places at the Committee table.

2. Mr. GARRETON (Chile) said that the report under review supplemented and corrected the report which the previous Government of his country had submitted to the Committee (CAT/C/7/Add.2) and which had given a distorted picture of torture in Chile at that time. Since the report under review had been prepared, there had been new developments in Chile and his delegation had therefore had additional information on the recently adopted legislative measures distributed to the members of the Committee.

3. The situation in Chile had changed considerably since 1990. Between 1973 and 1990, torture had become institutionalized for political purposes. It had thus been practised with impunity, so much so that, in 17 years, the civilian and military courts had convicted only one person, a policeman, of the crime of torture. Unlawful administrative practices had also encouraged torture: some police officers had thus operated under assumed names or used cars without number plates and there had been secret prisons.

4. Under the previous régime, torture had also been systematically used to put pressure on opposition groups, to identify the persons responsible for terrorist acts and to discover where weapons had been hidden. That practice had been brutal and cruel, but refined methods had also been used and, in many cases, the victims had died. Torture had not only been physical, but also psychological and large-scale. As a lawyer for the Vicaría de la Solidaridad, he had seen detainees confess even before they had been asked any questions because they had been so terrified by the prospect of being tortured.

5. Between 1979 and 1989, more than 200 cases of torture had been reported each year. Since the constitutional Government had taken office in 1990, only 35 cases had been reported but, even if that figure was much lower than the averages for the previous decade, the Government none the less considered that it still reflected an abnormal situation, partly as a result of the fact that, despite the change of Government, the police were the same.

6. Even though action to combat torture had not been completely successful, despite the Government's efforts, there was no denying the fact that the number of complaints had dropped considerably. Moreover, it seemed that the most recent cases of the ill-treatment of detainees had never endangered their lives. Until the final years of the previous military Government, a person could be held incommunicado for up to 70 days, but that period had just been reduced to a maximum of 10 days and torture was therefore much less likely to occur. It could thus be said that, in Chile, torture was no longer institutional, but residual. Proceedings had been instituted against the alleged perpetrators of recently reported cases of brutality. In any event, it was out of the question that the constitutional Government would ever recommend the use of torture, even to combat possible terrorists.

7. In order to make it clear that it intended to break with earlier practices, the constitutional Government had withdrawn all the reservations to the Convention which had been formulated by the military Government and which had defeated the Convention's purpose. Moreover, as the members of the Committee could see from the additional report which had been distributed to them, the Government had adopted new provisions relating to the death penalty. It had also considered abolishing the death penalty, but the National Congress had rejected that proposal.

8. Two laws relating to the protection of detainees had been adopted in 1991. One had abolished solitary confinement and the other provided that, if a judge decided to extend the period of police custody, which was normally 48 hours, up to a maximum of 5 days, or 10 days in the case of terrorist acts, he had to ensure in all cases that the detainee was examined by a doctor who did not belong to the prison administration. In addition, detention incommunicado had been reduced to 10 days, during which the accused could receive daily visits from his lawyer, in the presence of a police officer or prison administration official. Under the Act of 14 February 1991, judges also had to ascertain that an accused's confession had not been obtained under duress. As a transitional measure applicable to political cases carried over from the military régime, the judge, who was now a civilian judge, was required to regard any retraction by an accused person as a new statement and not as a retraction within the meaning of the law.

9. A chair of police ethics had been created and a programme established to provide policemen with ethical training. The International Committee of the Red Cross had decided to end its mission to Chile, thereby indicating that it no longer regarded the situation in the country as a matter of concern.

10. In conclusion, he emphasized that, while the considerable improvement in the human rights situation in Chile was to be welcomed, it was necessary to remain vigilant and to bear in mind that the country had just gone through a very difficult period in its history.

11. The CHAIRMAN, noting that the information document which the Chilean delegation had distributed to the members of the Committee existed only in Spanish, requested the Chilean delegation to read it out so that it could be interpreted into the Committee's other working languages.

12. Mr. CRUZ (Chile) read out some additional information to the report (CAT/C/7/Add.9) stating that the Government of Chile had submitted a bill to the National Congress for the complete abolition of the death penalty in Chile. The majority of the National Congress, many of whose members were still linked to the previous régime, had unfortunately chosen to maintain the death penalty for 28 crimes, 23 of which were likely to be committed only in wartime. The five ordinary crimes to which the death penalty still applied were the following: crimes committed by persons already sentenced to forced labour or life imprisonment (Penal Code, art. 91); kidnapping, if it involved homicide, rape or serious injury (art. 141); rape or sodomy, if it had caused the victim's death (art. 372 bis); parricide (art. 390); and theft involving homicide (art. 443).

13. As far as criminal legislation for the protection of detainees was concerned, as soon as it had taken office in March 1990, the new Government had submitted a bill to the National Congress designed to improve protection

for the rights of individuals and, in particular, those of detainees. The bill had been adopted, with some amendments, as Act No. 19047, which had been in force since its publication in the Gaceta Oficial on 14 February 1991 and was a major step towards recognition of the rights of individuals both in criminal and in procedural matters. It gave the civilian courts jurisdiction over a very large number of offences which the military régime had placed under the jurisdiction of the military courts. Many criminal offences, whose vague definition had allowed for abuses, had also been defined more precisely.

14. With regard to legislative provisions relating to the enforcement of sentences, it should be noted that the accessory penalty of solitary confinement, provided for in article 21 of the Penal Code, was now used only as a disciplinary measure in penal establishments; it could be applied for a second time only with the authorization of a judge. The duration of detention incommunicado and solitary confinement, to which escaped convicts were liable, had also been reduced, from six to three months in the case of the former and to a maximum of six months in the case of the latter.

15. As far as procedure was concerned, new police custody measures had been adopted, as Mr. Garretón had already stated.

16. The conditions under which persons in police custody could be held incommunicado had also been made less harsh. The Act of 14 February 1991 had added a new paragraph to article 293 of the Code of Criminal Procedure stating that a person held incommunicado before being brought before a judge could not be denied the right to speak with his lawyer, in the presence of a police officer or prison official, for up to 30 minutes a day. They could, however, discuss only the treatment to which the detainee was subjected, his conditions of detention and his rights. Moreover, under article 299 of the Code of Criminal Procedure, a person could be held incommunicado on the order of a judge for five days before being charged, after which he could be held incommunicado for a further five days or, in other words, for a total of 10 days. Article 299, paragraph 2, which had provided that detention incommunicado could be extended for the purposes of the investigation and to prevent conspiracy had been repealed on account of the abuses to which it had given rise. Moreover, article 303 of the Code of Criminal Procedure had allowed any person held incommunicado to communicate with his lawyer, in the presence of the judge, in order to have his detention incommunicado ended. In order to dispel any doubts in that regard, the new Act made that possibility a right of detainees.

17. Article 481 of the Code of Criminal Procedure required that a confession should be made freely and with full awareness of its significance. Article 323 of the Code required judges to take all the necessary measures to ensure that the person concerned had not been tortured or threatened with torture before making his confession and, in particular, that the medical examination provided for in article 272 bis had been carried out.

18. In cases which had been transferred from the military to the civilian courts, judges were required to take a new statement from the accused regarding their involvement in the acts with which they were charged. If they retracted the statement made to the military courts, the general rules on retractions did not apply and the statement taken was regarded as the first.

19. With regard to the training of members of the judicial police, a set of measures had been adopted to prevent torture. For example, the Directorate-General of the Judicial Police had established contacts with human rights organizations, the Director-General of the Judicial Police provided ongoing training for its officials, a code of police ethics was being prepared and instruction in international human rights instruments and police ethics had been included in the curriculum of police colleges. The Directorate of the gendarmeria, which was responsible for prison administration, also organized human rights courses.

20. Measures had been taken to punish persons responsible for acts of torture. The judicial police was conducting several inquiries into complaints of violence against detainees. In 1990, only three complaints had led to administrative proceedings.

21. Ms. DIAZ PALACIOS (Country Rapporteur) said that the additional report under consideration was an unusual and very interesting analysis of the use of torture in Chile under the previous régime, while the additional details that had just been provided gave information on the measures adopted by the present Government.

22. She wished to know what means had been used at the institutional level and as part of the legislative reform to deal effectively with torture, a problem that had existed for a great many years. For example, was an official body responsible for coordinating action to combat torture and were both the Executive and the Legislature involved in that task?

23. With regard to the complaints of torture to which reference had been made and which had led to a number of convictions, she asked whether the victims had been compensated and, if so, how. In view of the systematic and institutional nature of torture under the previous régime, she wished to know whether there were currently any information and education programmes designed to make the population aware of the problem of torture and to encourage citizens to report such acts.

24. The 10-day period of detention incommunicado during police custody seemed too long and she asked why so long a period had been maintained. Lastly, as doctors had been involved in torture, she inquired whether any measures had been adopted to prevent that from occurring again.

25. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) commended the Chilean delegation on the written report and its oral presentation of the report. He nevertheless noted that the information provided was of a general nature, while, according to the relevant guidelines, States were required not only to provide the Committee with general information, but also to describe how they were giving effect to the various articles of the Convention.

26. Neither the oral nor the written information seemed to contain any definition of torture within the meaning of the Convention. Information had also not been provided on the questions of extradition, refoulement and expulsion or on mutual judicial assistance, universal jurisdiction, the rehabilitation of victims, conditions of detention and the organization of the judiciary. He agreed with Ms. Diaz Palacios that the Chilean delegation should give further details on training: although training for policemen had been mentioned, no information had been provided on training for military personnel, doctors and court and prison officials.

27. Mr. SORENSEN thanked the Chilean delegation for its very comprehensive and encouraging report. Referring to the penultimate paragraph on page 6 of the report, he recalled that another rehabilitation centre, CINTRAS, had been set up in 1984 thanks to private Danish funds. Since the Chilean Government had shown an interest in such initiatives, it might consider financing that centre.

28. As far as the involvement of doctors in acts of torture committed under the previous Government was concerned, he stressed the need to punish all guilty parties. To his knowledge, only eight doctors had been brought before the courts, six of whom had been convicted. Those figures were absurdly low when compared to the statistics available for other countries such as Uruguay, where hundreds of doctors had allegedly been involved in acts of torture. He also requested information on the educational measures adopted for the benefit of medical personnel in Chile.

29. Lastly, with regard to the penultimate paragraph of the report, he informed the Chilean delegation that the United Nations Centre for Human Rights was perfectly able to provide the relevant information.

30. Mr. BURNS said that he was glad to see how different the current report was from the previous one and, in particular, that the Chilean Government had withdrawn the reservations which had been made to the Convention. That initiative was yet another indication of the democratic Government's firm determination to eliminate the practice of torture.

31. He asked for additional information on the current structure of the civilian and military police and on relations between the military authorities and the civilian Government. A complete reorganization of those structures was essential if the reforms planned by the new Government were to be effectively implemented.

32. The fact that a suspect could be held incommunicado by law for up to 10 days was disturbing and he requested the Chilean delegation to clarify that point. Moreover, the report did not indicate whether statements made outside judicial proceedings and obtained under duress were currently also considered inadmissible. He also asked whether a system of compensation had been set up for the victims of torture, whether the provisions of the Convention had been incorporated directly into Chilean domestic law and what legislative provisions governed pre-trial detention and the declaration of a state of emergency.

33. Ms. CHANET welcomed the radical changes that had taken place in Chile and the efforts made to wipe out any trace of the dictatorship. The withdrawal of the reservations which the previous Government had formulated when it had ratified the Convention against Torture was also commendable.

34. She asked for more detailed information on the structure of the police force and the army and on the organization of the Corps of Carabineros, as almost all the complaints of torture during detention that had been filed recently had been against members of that Corps. She asked what the exact role of justice and the courts was, how applications for habeas corpus were dealt with and whether reforms of military justice and the military courts were planned. Was an amnesty being considered and, if so, would it apply both

to civil and criminal actions? Were acts of torture punished as such, had the definition of torture contained in article 1 of the Convention been incorporated directly into Chilean law and was torture to become a criminal offence?

35. With regard to article 2, paragraph 3, of the Convention, under which "an order from a superior officer or a public authority may not be invoked as a justification of torture", she asked whether any new provisions to that effect had been adopted in internal law. What was Chile's position in respect of the commitment States were required to make under article 3 not to expel, return ("refouler") or extradite a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture? Referring to articles 5 and 7 of the Convention, she asked whether Chile had jurisdiction over offences committed abroad by foreigners, if they were arrested in its territory. The report stated that it was prohibited to obtain a confession by means of torture. Did that mean that confessions obtained in that way were inadmissible under criminal procedure and that they therefore had no value as evidence?

36. Mr. KHITRIN thanked the Chilean delegation for its report, which was no less than an indictment of the previous Government. He wished to know how the persons responsible at the highest level for the acts of torture committed under the dictatorship had been prosecuted and whether, in particular, the members of the Supreme Court had been punished. He asked whether the Chilean people was aware of the existence of the Committee against Torture and, if so, whether it had been informed of the untruthful nature of the report which the previous Government had submitted to the Committee in November 1989.

37. Mr. MIKHAILOV welcomed the very positive political changes taking place in Chile. The other members of the Committee had already asked a number of questions which he had intended to raise, but he would like to know how the remedy of habeas corpus operated under the current constitutional system.

38. The CHAIRMAN said that, in September 1989, Chile had submitted an initial report that had focused primarily on a description of the legal situation and, in particular, the incorporation into internal law of the obligations laid down by the Convention, bearing in mind the reservations to some of its articles formulated by the Chilean Government. The gaps in that initial report had led the members of the Committee to request an additional report, which, in contrast to the former, focused on the measures adopted to give effect to the provisions of the Convention in practice. As a result of the additional information just provided by the Chilean delegation, the members of the Committee now had an idea of the situation in Chile de jure and de facto. As the country rapporteur and the alternate country rapporteur had said, some further details on the implementation of each article of the Convention should dispel any doubts the members of the Committee might still have. There was no doubt in his own mind that the Chilean delegation would try to fill those gaps by means of its oral replies to the specific questions put to it.

39. Endorsing Mr. Sorensen's question concerning the penalties imposed on officials guilty of acts of torture since Chile's ratification of the Convention against Torture in 1988, he said that he also wished to know what measures had been adopted to prevent and punish acts of violence committed, in particular, by some carabineros. The courses organized on their behalf did

not appear to have achieved the desired results. He asked whether an investigation into such acts had been conducted and whether the persons responsible had been punished.

40. He also had doubts about the implementation of article 15, which specifically provided that any statement made as a result of torture could not be invoked as evidence. However, allowing judges to accept a statement made during the investigation, even if it had been made under duress, rather than the retraction which might have been made during the trial, appeared to be contrary to the spirit of the Convention, according to which such a statement should not be taken into account under any circumstances.

41. In reply to the Chilean delegation's request for advice on the measures to be taken to prevent torture and other ill-treatment, he invited the delegation to refer to the Amnesty International report which proposed various measures designed to prevent and punish violence in all its forms and in particular torture. Moreover, the concern of the members of the Committee about the extension of the period during which an arrested person was held at the disposal of the police without being brought before the competent judicial authority was based on the observation that the longer that period was, the more the risk of torture increased.

42. With regard to the measures that could be taken in Chile for the rehabilitation and compensation of the victims of acts of torture, he proposed that the Chilean delegation should attend the second part of the meeting at which the Chairman of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture would report on the work being done for that purpose by a large number of organizations from all parts of the world, thanks to the Fund's financial support.

43. Mr. Garretón, Mr. Cruz and Mr. Oyarce (Chile) withdrew.

The meeting was suspended at 11.50 a.m. and resumed at 12.10 p.m.

STATEMENT BY THE CHAIRMAN OF THE BOARD OF TRUSTEES OF THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE

44. Mr. WALKATE (United Nations Voluntary Fund for Victims of Torture), speaking on his own behalf and on behalf of the four other members of the Board of Trustees, welcomed the opportunity to address the members of the Committee and noted that such contacts would be further strengthened by Mr. Sorensen's presence at the meeting of the Board of Trustees. The members of the Board of Trustees would also hold discussions with Mr. Kooijmans, Special Rapporteur on the question of torture. Those meetings showed that there was a desire to work together to put an end to the scourge of torture.

45. The United Nations Voluntary Fund for Victims of Torture had been established under General Assembly resolution 36/151 of 16 December 1981, in which the General Assembly had decided to extend the mandate of the United Nations Trust Fund for Chile, established by General Assembly resolution 33/174 of 20 December 1978. That measure was designed to make the new Fund capable of receiving voluntary contributions from all sources for distribution through established channels of humanitarian assistance "to individuals whose human rights have been severely violated as a result of torture and to relatives of such victims". The Board of Trustees was

responsible for advising the Secretary-General on the best way of distributing its resources. The Fund was financed mainly by contributions from States, although donations from other sources had initially been very helpful; one non-governmental organization even made regular contributions to the Fund. Contributions to the Fund could be made by any natural or legal person, whatever its status under international law, and regular contributions by 43 States allowed it to lend its support to some 100 programmes or establishments for assistance to victims of torture throughout the world.

46. Nearly half of the States parties to the Convention contributed to the Fund, whose existence and needs had to be drawn to the attention of the delegations of States parties that requested advice on measures to provide compensation for the victims of torture and to facilitate their reintegration in society.

47. The Fund currently had $US 2.5 billion available for distribution to some 100 projects. The funds allocated by the Secretary-General on the proposal of the Board of Trustees could vary considerably, from $10,000 or less to $300,000, depending on the size of the project and the activities carried out. The best known beneficiaries included the rehabilitation centres for victims of torture in Copenhagen, Toronto and London, as well as the two centres in Paris and the major establishments set up in Argentina and Chile.

48. However, there was no denying the fact that the size of the projects undertaken was inversely proportional to the seriousness of the situation in the country concerned. It was often hard to imagine the daily problems faced by the doctors, nurses, social workers and sociologists who devoted their lives, sometimes clandestinely and regardless of the danger, to the rehabilitation of persons who had suffered in their innermost being. The Board of Trustees therefore ensured that field officers informed it of their day-to-day experience, not only in order to keep abreast of how funds were used, but also in order better to meet their needs. For example, some centres might suddenly receive an influx of new patients. In 1990, for example, the centres in London and Toronto had taken in 2,000 and 600 new patients, respectively. The criteria for granting financial assistance were constantly being reviewed by the Board of Trustees, which interpreted torture in the broad sense on the basis of the definition contained in article 1 of the Convention and, if necessary, of the provisions of article 7 of the International Covenant on Civil and Political Rights.

49. The Board of Trustees also provided financial support for associations of relatives of disappeared persons, as experience had unfortunately shown that persons who had been kidnapped or who had disappeared mysteriously had frequently been tortured. He drew attention to the Draft Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances, submitted in August 1990 to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by Mr. Joinet, Chairman of the Working Group on Detention (E/CN.4/Sub.2/1990/32) and, in particular, to article 1 of the draft, which he read out. He expressed the hope that the text of the Declaration, which met a long-standing need of non-governmental organizations and humanitarian agencies, would one day serve as the basis for the drafting of a binding instrument.

50. The Board of Trustees had to consider projects of all kinds on which it sometimes found it difficult to take a decision, although it was constantly trying to take its mandate to its very limits in order to assist as many victims as possible. He drew attention to two projects which were currently of considerable interest to the Board of Trustees. The first related to the organization of seminars to promote an exchange of views between persons in charge of projects throughout the world who were working to achieve a common goal, but who occasionally felt very isolated when they were in remote and dangerous regions. The second related to a study of the motivations of torturers. Doctors and psychiatrists in particular were already analysing the testimony of persons who had taken part in torture and who had agreed to discuss their motives. Such research might help to combat torture more effectively by more appropriate preventive measures.

51. The Board of Trustees hoped that there would be more exchanges between the various bodies involved in action to combat torture and it would be grateful if the Committee would keep it informed, through its secretariat, of any problems it might encounter either in defining acts of torture or in implementing the provisions of the Convention, as well as of any decisions it might take to solve those problems.

52. The CHAIRMAN thanked the Chairman of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture for his statement and assured him that the members of the Committee would do their utmost to draw the attention of the public to the Fund's activities as well as to its needs. He invited the members to put questions to Mr. Walkate.

53. Ms. CHANET asked how voluntary contributions could be made and what criteria were used for the allocation of funds to one project or another. She also asked how the Fund could be contacted to request its assistance and proposed that the links between the Committee and the Fund should be institutionalized so that there would be a two-way exchange of information.

54. Mr. WALKATE said he regretted that he would be unable to attend the Committee's press conference. However, he offered to prepare a brief statement to be made available to the press on that day. In order to request assistance from the Fund, it was enough to fill out a form. The choice of projects which were to be financed and whose soundness always had to be verified could give rise to problems. Project officers could also encounter serious obstacles, as in the case of a project for the care of 500 children whose parents had disappeared or been killed in front of them. The doctors in charge of that project had been forced to leave the country concerned.

55. He stressed that some contributions were only of symbolic value and noted that the Fund was one of the programmes to which contributions were announced at the United Nations Pledging Conference for Development Activities.

56. Mr. DIPANDA MOUELLE requested details of the research on the motivations of torturers.

57. Mr. WALKATE said that the project was a long-term one that was being carried out as a result of cooperation between the Universities of Leiden and Toronto on the basis of a very detailed questionnaire to be completed by torturers. There was a great deal of information material, such as video interviews, which still had to be organized and analysed.

58. Mr. SORENSEN, drawing attention to the close cooperation between the centres for the rehabilitation of victims of torture and the Fund, noted that British television had broadcast a film on torturers in September 1990.

59. With regard to contributions, he recalled that an amount that might appear small to western countries represented far more to the developing countries. It should also be remembered that the fact of benefiting from United Nations financial assistance could afford protection, thus giving persons in charge of projects greater room for manoeuvre and making it easier for them to attend seminars abroad.

60. Mr. WALKATE agreed that protection might be afforded. It would not be physical protection, but it was none the less true that a Government might hesitate before taking any action against an individual or a project that received assistance from the United Nations.

61. The CHAIRMAN thanked Mr. Walkate for his statement and assured him that the Committee fully intended to cooperate with the Fund and to strive to make its work known to the general public.

The meeting rose at 12.50 p.m.